



October 31, 2002

Mr. Harold Willard
Assistant City Attorney
City of Lubbock
P. O. Box 2000
Lubbock, Texas 79457

OR2002-6217

Dear Mr. Willard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171483.

The Lubbock Police Department (the "department") received a request for copies of all police reports "made on" a specified person regarding incidents involving the person that occurred during a specified time interval on the property managed by the requestor. You claim that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that portions of the information at issue are excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy.¹ We note that information must be withheld under section 552.101 in conjunction with the common-law right to privacy when (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. Furthermore, this office has found that some kinds of medical information constitute highly intimate or embarrassing information that must be withheld from disclosure under the common-law right to privacy. *See Open Records*

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See Gov't Code* § 552.101. Section 552.101 encompasses information protected from disclosure under the common-law right to privacy.

Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). In addition, where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989).

In this instance, the requestor is requesting copies of information regarding incidents that occurred on property managed by the requestor involving a specified individual. Therefore, we do not agree that the request in this instance is for unspecified information regarding the named individual. Accordingly, we conclude that the compilation in this matter does not implicate the specified individual's right to privacy. Consequently, the department may not withhold any portion of the information at issue under section 552.101 in conjunction with the common-law right to privacy on the basis of the holding in *Reporter's Committee*. However, we have marked some information in Exhibit G that must be withheld from the requestor pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

You also claim that Exhibits B and C are excepted from disclosure pursuant to section 552.108(a)(1) of the Government Code. Section 552.108(a) provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. *See Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibits B and C constitute cases that the department considers to be under active investigation. Therefore, we conclude that the release of most of the information in Exhibits B and C "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a).

You also claim that Exhibits D, E, and F are excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than

conviction or a deferred adjudication. You state that the cases associated with Exhibits D, E, and F relate to investigations that have been concluded, but which did not result in convictions or deferred adjudications. Based on our review of your representations and the information in these exhibits, we understand the department to assert that all of the information in those exhibits pertains to criminal investigations that concluded in a final result other than conviction or deferred adjudication.

We note that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). Accordingly, with the exception of basic information that must be released to the requestor, we conclude that the department may withhold Exhibits B and C pursuant to section 552.108(a)(1) of the Government Code and Exhibits D, E, and F pursuant to section 552.108(a)(2) of the Government Code.

In summary, the department must withhold the information that we have marked in Exhibit G pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. With the exception of basic information that is contained in the remaining submitted exhibits, the department may withhold Exhibits B and C pursuant to section 552.108(a)(1) of the Government Code and Exhibits D, E, and F pursuant to section 552.108(a)(2) of the Government Code. The department must release the remaining information in Exhibit G to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

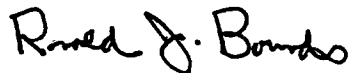
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Mr. Harold Willard - Page 5

Sincerely,

A handwritten signature in black ink that reads "Ronald J. Bounds". The signature is written in a cursive style with a large, stylized "R" and "B".

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 171483

Enc. Marked documents

cc: Ms. Tanya Ruebush, Mgr.
Windcrest Estacado Apartments
512 North MLK Boulevard
Lubbock, Texas 79403
(w/o enclosures)